

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE**

SCA#: 0028/2016: CASE #: 00387/2014
SCA#: 0029/2016: CASE #: 03745/2015
SCA#: 0030/2016: CASE #: 03746/2015

OTIS MELBOURNE MYLES

V.

THE QUEEN

Appearances:

Mr. John Furniss for the Appellant

**Mr. Patrick Moran for the
Crown/Respondent**

Before:

Justice Michael Mettyear (Actg.)

Heard:

11th August 2016



JUDGMENT

1. This is an appeal against a Summary Court conviction recorded on the 14th September 2015. It followed a contested trial before Magistrate K. Gunn. Following conviction the case was remitted to the Grand Court for sentence and on the 23rd March 2016 the Appellant was sentenced to 6 years' and 9 months' imprisonment.
2. I have not been asked to hear any evidence in the appeal.
3. The offence for which he was convicted is conveniently set out in paragraph 2 of the Judgment as follows:



"Otis Myles on Monday 23rd December 2013 entered as a trespasser, the residence of Peter Gilmore and Sandra Tristan at 47 Trophy Crescent, George Town and stole therein jewellery, estimated value between US\$125,000 and US\$150,000 and one safe and contents valued at CI\$350 belonging to Peter Gilmore and Sandra Tristan."

4. The central facts are not in dispute. A burglary was committed at 47 Trophy Crescent between the 18th and 24th December 2013. The premises had been locked and secured on the 18th December by the owners who were travelling off the Island. The premises were, thereafter, visited each day by a Mr Piang, acting as caretaker.
5. On his visit at around noon on the 24th December he discovered that the house had been burgled at some time after his visit on the previous day. In the burglary a safe containing documents, as well as jewellery were taken and never recovered. Mr Piang saw electrical and dive equipment stacked on the house drive - probably suggesting that the burglary was in progress shortly before its discovery. Inside, the house had been messily searched. Entry to the house had been forced.
6. The evidence pointing to the Appellant being, at least, one of the burglars came from two sources. Firstly, his admissions, in interview with the police that he had been at the scene of the burglary with another man, "Devonte", in circumstances which were rather odd, if they were true. The Appellant said that Devonte was on police bail and that he was told by Devonte that the owners of the house where the two men were, 47 Trophy Crescent, had gone away. He also said to the police that visible to him at the side of the house were a variety of items in bags.

The Appellant said that he looked into the bags and saw liquor, a laptop and other electrical items. He said he looked into the bags to see if the items were any good. Whilst the two men were at the house Devonte entered the premises frequently and the Appellant said that he knew that Devonte was acting dishonestly. Devonte wanted the Appellant to help him move the items but he claimed no help was given.

7. The second source was the finding of a fingerprint from the Appellant on a chocolate tin in the kitchen of the house.
8. Such were the main features of the Crown's case and at its conclusion a submission was made that there was no case to answer. The Magistrate ruled on the submission as follows:

"I was satisfied that I could accept all the witnesses' evidence as being both credible and reliable. I was sure that the fingerprint on the chocolate tin had been made by Mr Myles. I was sure that the burglary had been interrupted on the evening of 23rd December.

This is a case concerning one fingerprint recovered on a moveable object. The evidence was that when DC Best arrived people were already on scene and he assumed they were cleaning. Mr Piang confirmed that Miss Sandy was tidying when he arrived. However, Miss Carver is asking me to find that there was a possibility of the tin being moved from inside the premises to the outside by the burglar (most likely Mr Brown) and that subsequently the tin was moved back into the house by someone other than the defendant, possibly by one of the people cleaning. She suggested that this possibility together with the defendant's interview is sufficient to raise a reasonable doubt. I found that there was no evidence to suggest that the tin was ever outside. Even Mr Myles did not state that he saw the tin.

I could and did infer from the evidence that electronic and dive equipment was stacked up on the driveway that the burglar intended to steal items of reasonable value. I found that the chocolate tin was only of nominal value and therefore of little financial benefit to the burglar. It is therefore highly unlikely that a burglar would seek to steal it given the other items available. Furthermore, there was evidence of other food items being consumed on the premises and the packaging being left in situ. This provided strong evidence which supports the inference, which I did draw, that the content of the chocolate tin was consumed in the same manner.



The suggestion that the burglar either consumed the product inside the house before taking an empty tin outside or the burglar taking the full tin outside, putting it in the bag before Mr Myles examined the contents of the bag and thereafter consuming the content was so remote that I was sure that I could reject it. Furthermore, if the people cleaning the house had picked up the tin from outside, I would reasonably expect such a person to have discarded the item altogether by placing it in the garbage rather than place it in the kitchen which had clearly been disturbed. I found that Miss Carver's submission that the tin was moved was pure conjecture given the evidence.

I found that on the evidence I was satisfied so that I was sure at that stage that the chocolate tin was recovered in the spot it had been discarded by the burglar. I rejected the defendant's denial that he had entered the premises. I inferred from the presence of a tin with the defendant's fingerprint in the kitchen with other items that had been disturbed and even consumed that Mr Myles did enter the premises. Of this I was sure. Furthermore, the evidence that items were stacked up outside and the jewellery and the safe having been removed satisfied me so that I was sure that a burglary occurred. Mr Brooks' evidence did not raise a doubt to the defendant's involvement in the burglary as he merely spoke to Mr Brown off the premises and there is no evidence to suggest that Mr Brown was the male that was subsequently seen jumping over the fence. The absence of any of the items at Mr Myles' property did not cause me to doubt that he was involved in the burglary as the nature of the items were such that they could be disposed of in the time that elapsed between the burglary and the search of his premises. The evidence adduced made me sure that Mr Myles was either the sole perpetrator or acted with another, possibly Devonte Brown, to carry out the burglary. Although Mr Myles asserted that Mr Brown had taken the safe and jewellery one or two days before, I found that I was sure that I could reject this assertion given that Mr Piang went into the premises every day and did not see any signs of a burglary. I was satisfied that Mr Myles stole the jewellery and the safe and was stacking Mr Gilmore's property in the driveway to be removed."



9. For myself, I would take the fact that no items from the burglary were found at the Appellant's property as a factor positively supporting the Appellant's case. However, I would give it little weight in view of the delay between the burglary and the search of his premises. This amounts to a minor difference between my approach and that of the Magistrate on this single issue. Overall, I agree fully with the learned Magistrate's approach and with the conclusion she reached. The submission of no case was clearly misconceived and rightly rejected. Mr Furniss, who did not appear at the trial, made, before me, no criticism of the ruling on this issue.

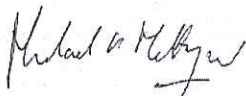
10. The Appellant gave evidence in the trial and was cross examined.
11. The grounds of appeal read as follows:
- a. There is no clear evidence to indicate the position of the chocolate tin prior to the arrival of the Scenes of Crime Officer;
 - b. At the time of his arrival there was cleaning up already taking place;
 - c. The Appellant gave evidence as to what he had touched and where;
 - d. The Magistrate was therefore wrong when she rejected that evidence from the Appellant in the absence of any clear and direct evidence to the contrary.
12. It is apparent that the complaints about the conviction are all centred on the fingerprint on the chocolate tin. As developed by Mr Furniss, the argument, which repeated that which was put to the Magistrate, runs thus: The Appellant's evidence was that he never went into the burgled house. It is accepted that it was his print on the tin. Therefore, the tin must have somehow got outside where the Appellant must have touched it, depositing the fingerprint. It must then have been taken back into the house by a person or persons unknown, probably as part of the evidence-clearing up exercise. The submission proceeds that, as the Crown do not have any direct evidence to contradict this account, the Magistrate should have dismissed the case, because she could not exclude the possibility of it being true.
13. It is an interesting submission, beguilingly advanced by Mr Furniss. However, I cannot accept it. A *prima facie* case cannot fail simply because some theory is suggested, without evidence to support it that might, if it were true, provide an innocent explanation.



The theory put forward on the Appellant's behalf is entirely unsupported by evidence. In particular there is no evidence that the tin was taken outside, no evidence that the Appellant touched it outside and no evidence that it was taken back into the house. The theory seems unlikely to be true. Nevertheless, it deserved a proper scrutiny from the Court and that is what it got. The Magistrate convincingly set out in paragraphs 19, 20 and 21 of her judgment why she regarded the theory as "pure conjecture".

14. The Appellant has a further problem. Despite the burden of proof remaining on the prosecution throughout, to have any realistic hope of an acquittal, once the no case submission had failed, he had to raise the possibility in the Court's mind that his own account might be true. In fact the Magistrate concluded that his *"....evidence was fraught with inconsistencies. His demeanour suggested that he was being dishonest"*. Her reasons for coming to these decisions are set out in paragraph 27 (i) to (v). The findings have not been challenged nor could they be.
15. My conclusion is that the Magistrate was not only entitled to reach a verdict of guilty of burglary, she was plainly right to do so. In such circumstances the appeal is dismissed.

Dated this the 16th August 2016



Mr. Justice Michael Mettyear (Actg.)
Acting Judge of the Grand Court

